IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16103 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRADIP HAMIRBHAI CHANDAPPA

Versus

DENA BANK

Appearance:

1. Special Civil Application No. 16103 of 2004

MR DG CHAUHAN for Petitioner No. 1

MR ND SONGARA for Petitioner No. 1

MR KM PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2

MR SAMIR J DAVE for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 01/03/2005

ORAL JUDGEMENT

1. Rule. Learned advocate for the petitioner mainly submitted that the is order dated 11-9-2003 passed by the Annexure-D to the present compilation. Such type of order is dehors to the provisions of Industrial Disputes Act, 1947 and and judicial pronouncements by the various courts including the judgment report in 2001 (1) G.L.R. 639 and 2004 (3) LLJ 939.

2. It is submitted by the learned advocate for the petitioner that present dispute was raised by the petitioner before the Labour Officer concerned of the Central Government which pertains to termination of service and like and he ought to have made a reference to the labour court as there was sufficient and cogent material before the concerned officer of the Central Government for making reference and therefore the order passed by the Under Secretary, Ministry of Labour, central Government dated 11-9-2003 rejecting process making reference to the labour court deserves to be quashed and set aside. The learned advocate for the petitioner has taken this Court to various annexures which prima facie establish some connection between the employer and the petitioner. It is also submitted by the learned advocate for the petitioner that without appreciating the dispute, at this stage, suffice it will be if direction is given to the concerned officer of the respondent - Union of India for making reference to the concerned authority.

3. I have heard the learned advocate for the respondent No.1 Bank. He has submitted that whatever decided by the Under Secretary, Ministry of Labour, Central Government, for not making reference will not tantamount prejudging the industrial dispute. The Officer concerned before making a Reference has to be satisfied that there is some dispute prima facie and there is relationship of employee and employer and prima facie satisfaction is necessary otherwise there is no need of functioning by the concerned officer. Functioning or duty attached with such Officer has been performed legally and the order passed by the Officer concerned is legal and tenable at law. He has also submitted that because of several References, reference making was denied as per prima facie satisfaction of the concerned officer.

4. I have also heard the learned advocate appearing for the Central Government. He has submitted that there was no sufficient material before the officer concerned and therefore Reference was not made to the concerned

labour court. Before making a Reference, the Officer concerned must be satisfied and therefore Reference can be made. Therefore, the order passed by the Under Secretary, Ministry of Labour, Central Government, is true, correct and in consonance with facts and law.

5. Looking to the facts and circumstances of the case and considering prima facie connection of the petitioner with the respondent no.1 Bank as per Annexure-A and Annexure-C to the memo of the present petition as well as demands at Annexure-B to the present petition, prima-facie, I am of the opinion that there is dispute between the petitioner and the respondent no.1 Bank and it requires adjudication and it may not be prejudged by the concerned authority of the Central Government. I, therefore, quash and set aside the order Annexure-D passed by the Under Secretary, Ministry of Labour, Central Government dated 11-9-2003 and remand the matter to the very same authority to decide a fresh for making Reference process after hearing both the sides.

6. The concerned Officer of the Ministry of Labour, Central Government, shall decide reference making process independently and without being influenced by the observations made by this Court in this order which will not cause any prejudice to the rights and contentions of the parties. Accordingly this petition is allowed. Rule is made absolute to the aforesaid extent.

(D.N. Patel, J.)

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